

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT DEREK LURCH, JR.,

Plaintiff,

-against-

P.O. GILLIAN FRANCIS, ET AL.,

Defendants.

22-cv-4055 (JGK)

ORDER OF SERVICE

JOHN G. KOELTL, District Judge:

The plaintiff, appearing pro se, brings this action under 42 U.S.C. § 1983, alleging that, after he was assaulted and robbed, police officers unlawfully detained him under New York Mental Health Law § 9.41 and transported him to Bellevue Hospital for psychiatric evaluation. On August 4, 2022, the Court granted the plaintiff's request to proceed in forma pauperis ("IFP"), that is, without prepayment of fees. ECF No. 6. On December 12, 2022, the plaintiff filed a second amended complaint, which named as defendants the three New York City Police Department ("NYPD") officers whom the Court had previously ordered the New York City Law Department to identify pursuant to Valentin v. Dinkins, 121 F.3d 72, 76 (2d Cir. 1997). See ECF Nos. 12, 15, 16. On December 23, 2022, the Court directed service on defendants Officer Gillian Francis and Officer Jonathan Ruiz. ECF No. 19.

On January 6, 2023, the Court directed service on defendant Enmanuel Mendoza, who is no longer employed by the NYPD but whom the Law Department represented had designated the NYPD to accept service on his behalf. ECF No. 22 at 2 n.1; see also ECF No. 21 at 2. On May 26, 2023, the U.S. Marshals Service represented that they were unable to execute service because "there are multiple people with the same name" at the NYPD and the NYPD "will need more information such as shield number." ECF No. 26. The Court now again directs service on defendant Enmanuel Mendoza using the shield number (Shield No. 05660) given by the Law Department. See ECF No. 15 at 2.

DISCUSSION

Because the plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ Walker v. Schult, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); see also 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summons be served within 90 days of the date the complaint is filed, the plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

To allow the plaintiff to effect service on defendant Mendoza through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for this defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant.

If the complaint is not served within 90 days after the date the summonses are issued, the plaintiff should request an extension of time for service. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

The plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if the plaintiff fails to do so.


CONCLUSION

The Clerk of Court is directed to mail a copy of this order to the plaintiff, together with an information package. The Clerk of Court is instructed to complete the USM-285 forms with the address for defendant Mendoza and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Clerk of Court is further directed to mail an information package to the plaintiff.

SO ORDERED.

**Dated: New York, New York
May 31, 2023**



John G. Koeltl
United States District Judge

DEFENDANT AND SERVICE ADDRESS

1. Defendant Enmanuel Mendoza, Shield No. 05660, designated the New York City Police Department ("NYPD") to accept service on his behalf. Mr. Mendoza may be served at 1 Police Plaza, Room 110A, New York, NY 10038.